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SUBJECT: NIGERIA: SUBMISSION FOR 2002 PRESIDENT'S REPORT ON AGOA

REF: A. A) STATE 64055

[B](#). B) 01 ABUJA 2856

[1](#)1. Overview: Nigeria is yet to generate any significant new export activity under AGOA. Main reasons for this lack of progress appear to be Nigeria's unfavorable exchange rate and investment climate. Moreover, the Government of Nigeria and USG have been unable to finalize the visa regime that would allow exports under the textile and apparel provisions of AGOA. This is a joint Lagos/Abuja message. End Overview.

[1](#)2. Market Economy/Economic Reform/Elimination of Barriers to U.S. Trade: The Government of Nigeria, under democratically elected President Olusegun Obasanjo, has repeatedly stated its commitment to the free market and economic reform. With assistance from donors and the International Monetary Fund (IMF), the GON initiated a program of deregulation and privatization.

[1](#)3. Notwithstanding the efforts toward privatization and deregulation, the Government's overall economic policies have often been inconsistent with the putative goals of reform and opening its markets. In late 2001, the formal program with the IMF was terminated because Nigeria did not meet key macro-economic targets established under that program. In early 2002, the Government suspended implementation of an informal IMF program that sought more liberal exchange rate policies and fiscal restraint. The Nigerian Government continues to support a fixed and arguably overvalued exchange rate and high protective tariffs that restrict export competition. Policies that keep the Naira overvalued also effectively subsidize imports, penalize non-oil exports, and contribute to widespread currency arbitrage. Deficit fiscal spending forces the Central Bank of Nigeria to employ harsh monetary policy in an effort to mop up excess liquidity. This activity contributes to extremely high real interest rates and the unavailability of affordable credit for long term investment. Nigeria's erratic tariff regime seeks to protect domestic industry but discourages investment in productive activity, depresses market competition, and leads to the institutionalization of "tariff avoidance" behavior by importers.

[1](#)4. The country's telecom sector experienced dramatic development resulting from the introduction of GSM service. Other aspects of Nigeria's infrastructure witnessed only modest improvement in 2001. Notwithstanding the recent collapse of the effort to privatize NITEL, the Government continues to move forward with privatization. But Nigeria's investment promotion efforts are unable to overcome valid perceptions of corruption, security problems, fraud, and bureaucratic red tape. The development of capital markets, including a vibrant stock exchange, and a renewed focus on capitalizing and assisting small and medium-size enterprises, may offer hope for catalyzing domestic investment. Nigeria's financial institutions, however, remain almost exclusively focused on foreign exchange transactions. The domestic banks seem unable, at least in the short run, to provide sufficient capital to rejuvenate the country's declining industrial and agricultural sectors.

[1](#)5. Nigeria is party to numerous conventions and agreements regarding patent, trademark, and copyright protection; the country's laws generally favor protection of intellectual property owners and provides criminal penalties for violation of their rights. Regarding licensed information technology such as software, limited progress is being made, primarily through the efforts of the private sector. However, enforcement of existing IPR laws is weak because of limited resources. Piracy (counterfeiting of protected intellectual rights) remains commonplace, and the courts do not have the expertise to enforce the anti-piracy laws.

16. Nigeria does not discriminate against U.S. goods or services and allows for the free movement of foreign exchange into and out of the country. However, U.S. firms have sometimes encountered difficulties obtaining government procurement contracts or taking advantage of trade opportunities. Some U.S. bidders allege foreign competitors are engaged in non-transparent lobbying practices that undercut U.S. corporations, even when the U.S. firm enjoys a financial or technical advantage. U.S. firms also complain of foreign competitors utilizing fraudulent import documentation schemes to avoid payment of tariffs. Sensitive to these allegations, the Nigerian Government has issued concise procurement guidelines and has begun a due diligence process for capital expenditures over 5 million Naira (about USD 45,000) and 100 percent customs inspection of goods entering the country.

17. Rule of Law/Political Pluralism/Anti-Corruption: The May 1999 inauguration of a democratically-elected president ended nearly sixteen consecutive years of military rule. During these years of military rule, the institutions of government were mismanaged and allowed to atrophy. Since the return of democracy, these institutions have begun to rebound. National and state assemblies are functioning. There are three recognized political parties and several others that are seeking to register with the Electoral Commission. Opposition politicians and the media openly criticize the Government and are free to express differing points of view. In 2003, democratization in Nigeria will pass another milestone with the holding of national and state elections. Free and fair elections will help consolidate democracy, opening the door to more political and economic reform.

18. Respect for the rule of law has improved since the 1999 return of democratic government. For example, the Supreme Court recently made landmark decisions that affirm its role as the final arbiter of the national constitution and help define the contours of Nigerian federalism. However, the judicial system overall faces a lack of resources and inadequate administration that delay resolution of cases. There is a widespread perception that many lower level judges and magistrates are susceptible to inducements. This perception affects investor confidence in the court system's ability to safeguard intellectual and other property rights and the courts' ability to provide equal protection under the law. Efforts to reform the judiciary are underway, but comprehensive reform will be a long process.

19. Corruption is a problem not only in the courts, but throughout government and society. President Obasanjo has publicly committed to fight corruption, calling this one of his top priorities. Pursuant to this commitment, the Independent Corrupt Practices and Other Related Offences Commission (ICPC) was founded to investigate official corruption. The ICPC receives some training assistance from the U.S. Department of Justice. Despite ICPC and other initiatives to eliminate corruption in the federal government's contracting processes, corruption remains a persistent problem.

110. Poverty Reduction: Poverty reduction is the stated lodestar of the Government's economic agenda, but progress has been minimal. While greater attention has been placed on provision of basic services such as education and health, there has been little effective reform in these areas. Efforts in poverty reduction, including education and health care, have lacked cohesion and direction with many programs competing for limited international donor and GON resources. Government is engaged with the World Bank and International Monetary Fund, supported by USAID and other donors, to develop a Poverty Reduction Strategy Paper. The most effective poverty reduction approach might be to focus on per-capita economic growth, industrial capacity utilization, gainful employment and support for a heretofore shrinking Nigerian middle class. For poverty reduction to take root, government policies must be revised as the overall effect of its macroeconomic and investment policies appear to retard the economic growth and investment needed to spur poverty reduction.

111. Labor/Child Labor/Human Rights: Nigeria has a small but influential organized labor movement. Except for members of the armed forces and certain essential government security personnel, Nigerian workers may join trade unions and strike. The Government of Nigeria is engaged in addressing the problems of child labor and is a participant in efforts to eliminate trafficking in women and children. Worker rights and child labor laws are on the books but law enforcement is weak. Although its position on human rights is a vast improvement over the former military regimes, the Government's record on human rights is mixed. While civil liberties and political rights are well respected, security forces have often employed excessive force to quell civil unrest. Extra-judicial killings have been committed by security forces in their attempt to control outbreaks of

communal tensions which escalated during 2001. Although they do so less frequently than they did during military rule, security officials still beat detainees, and arbitrarily arrest and detain suspects.

12. AGOA Trade and Investment: Interest in the tariff benefits offered by AGOA remains high among Nigeria's business community, but the GON and the Nigerian private sector have been unable to develop an AGOA-related export sector to date. Nigerians are increasingly aware they are unprepared to exploit AGOA. To our knowledge, Nigeria has been unable to generate any new AGOA-related investment/exports. Growth in foreign direct investment in Nigeria's non-oil sector, while positive, is disappointing and well below the GON's stated goals.

13. AGOA Outreach/Technical Assistance: The U.S. Mission in Nigeria is highly engaged in promoting AGOA throughout the country.

- In 2001, the Economic and Commercial Counselors participated in AGOA workshops sponsored by the Nigerian Economic Summit Group and the Nigerian Association of Chambers of Commerce of Industry, Mining, and Agriculture.

- The Public Diplomacy office is enlisting a speaker to address processing exports and will send two AF/PD-sponsored AGOA Interns to the U.S. for training.

- The Foreign Commercial Service is working closely with the Nigerian-American Chamber of Commerce, the Nigerian Stock Exchange, and other Nigerian entities to facilitate business outreach and the development of strategic commercial partnerships.

- The U.S. Agency for International Development is promoting agricultural exports, specifically working on gum Arabic, sesame seeds, cashews, and other products. In addition, all USAID efforts to influence economic policy take into the account the importance of AGOA and other export opportunities. Examples of 2001/2002 USAID reports and studies that include AGOA are:

- "Comparative Evaluation of Draft Trade and Industrial Policies".

- "Constraints to Investment and Exporting in Nigeria: Towards An Agenda for Donor Intervention".

- "Implementing Nigeria's Export Promotion Policy".

- "Comments on Draft Trade Policy".

- "WTO Membership Obligations: Nigeria in Comparison to a New Member".

- "Implementing Trade Policy in Nigeria: Findings and Recommendations".

- "Nigerian Tariff Liberalization and Nigerian Exports: Analysis and Comparative Performance".

- "Issues in Harmonizing the Structure of Protection in ECOWAS: The Case of Nigeria".

- "Proposed National Framework: Trade and Commercial Policy".

- "Cassava Export Potential".

14. Led by the Ministry of Commerce, Nigeria has established an inter-agency AGOA committee that has received USAID assistance. USAID is also working to strengthen individual textile firms that could benefit from AGOA when the textile visa system is operative. Both the Ministry and the Nigerian Investment Promotion Commission have AGOA offices. Legislation to allow a needed increase in the penalty for transshipment is caught in the political stalemate that has affected almost all legislation in the National Assembly, and the GON has been responsive to numerous suggestions from the USTR on its AGOA-related regulations.

15. Host Country Trade Capacity Building Needs: Due to the country's constrained infrastructure capacity, particularly an erratic power supply, Nigerian businessmen claim they face a cost disadvantage of at least 25 percent compared with foreign competition. In some less serviced parts of Nigeria, they assert this figure climbs to 50 percent. Although infrastructure difficulties are real, a more important obstacle is probably macro-economic mismanagement that has led to high inflation and a non-competitive exchange rate. With the loss of cash crop production during the last 30 years, the agriculture sector currently is unable to exploit AGOA on large scale. A few products such as ginger, gum Arabic, and frozen prawns have possibilities for establishing niche markets in the U.S. under AGOA, and USAID is working with potential exporters. Nigeria's reputation for corruption, criminal activity, and financial fraud serves as a disincentive for many potential U.S. importers and keeps them from engaging local entrepreneurs directly.

16. Misguided macro-economic policies and a deficient infrastructure prevent Nigeria from taking advantage of AGOA. Government completion of agreements on textile and apparel

provisions will allow these items to benefit from AGOA tariff-free treatment, but without improved macroeconomic conditions Nigeria may not be competitive with its African neighbors who started much earlier. Another question is whether Nigeria can jumpstart its Free Trade Zones where red tape and other negatives are minimized. These, too, however, are subject to infrastructure deficiencies and exchange rate difficulties and so far have not met expectations.

Andrews